EXTENDED SCHOOL YEAR (ESY): RULES, GUIDELINES, AND SUGGESTED PRACTICES

Susan Loving, USOE
Susan.loving@schools.utah.gov
August 8, 2013

Acronyms

- IDEA = Individuals with Disabilities Education Improvement Act 2004
- IEP = Individualized Education Program
- LRE = Least Restrictive Environment
- ESY = Extended School Year
 - Full definition on Slide 4
 - This is used as the ESY for students, not the extended year for special educators
- FAPE = Free Appropriate Public Education
 - An educational program that is individualized to a specific child, designed to meet that child's unique needs, provides access to the general curriculum, meets the grade-level standards established by the state, and from which the child receives educational benefit
 - May be referred to as "a FAPE" or "FAPE"
- LEA = Local Education Agency
 - The forty Utah School districts, the Utah Schools for the Deaf and the Blind, and all public charter schools that are established under State law that are not schools of an LEA

IDEA on ESY services (§300.106)

- Each LEA must ensure that extended school year (ESY) services are available as necessary to provide a FAPE.
- ESY services must be provided only if a student's IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student.
- In implementing these requirements, an LEA may not:
 - Limit ESY services to particular categories of disability; or
 - Unilaterally limit the type, amount, or duration of those services.

Definition of ESY

- Special education and related services that are provided to a student with a disability:
 - Beyond the normal school year of the LEA;
 - In accordance with the student's IEP, and
 - At no cost to the parents of the student;
 and
 - Meet the standards of the State Education Agency (SEA).

Standards of the SEA

- ESY Guidelines
 - http://www.schools.utah.gov/sars/DOCS/resources/12esysvcs.aspx
 - Disseminated October 12, 2012.
- Utah State Board of Education Rule (R277-751)
 - http://www.rules.utah.gov/publicat/code/r277/r277-751.htm
 - Effective February 7, 2012

Utah State Board of Education Rule (R277-751)

R277-751-3. Determining Eligibility.

- A. Students eligible for ESY services are:
 - (1) Students who have been determined as eligible under Utah State Board of Education Special Education Rules and Part B of the IDEA; and
 - (2) Students whose IEP team has determined, based upon a review of multiple data sources and factors, on an individual basis, an ESY is required to receive FAPE.
- B. The student's IEP shall reflect the IEP team's decision regarding need for ESY services.
 - (1) Parents shall be provided with written prior notice of proposal or refusal to provide ESY services.
 - (2) If determined as eligible for ESY services, the IEP team shall determine the appropriate ESY program, based on the student's individual needs.
 - (3) ESY eligibility decisions and written prior notice of ESY programs shall be provided to parents in sufficient time to permit accessing dispute resolution options of the Procedural Safeguards, in the event of a dispute.

R277-751-4. ESY Program Standards.

A. The primary goal for a student requiring ESY services is to maintain the current level of the student's academic and functional skills and behavior in areas identified by the student's IEP in order to provide FAPE.

B. LEAs may not:

- (1) Limit ESY to particular categories of disabilities or particular ages or grade levels of students.
- (2) Unilaterally limit the type, amount, or duration of ESY services provided for students.
- (3) Limit data consideration by IEP teams to only an analysis of regression and recoupment.

C. LEAs shall ensure that:

- (1) ESY student programs are provided in the least restrictive environment.
- (2) ESY teachers and paraprofessionals meet IDEA's highly qualified requirements.

R277-751-5. Division of Responsibilities.

A. The duties of the Utah State Office of Education shall include:

- (1) Monitoring ESY compliance through:
 - (a) LEA program administrative reviews, such as Utah Program Improvement Planning System (UPIPS) monitoring;
 - (b) requiring student attendance and membership accountability.
- (2) Providing technical assistance to LEAs;
- (3) Collecting data on:
 - (a) the number, disabilities, and levels of students served;
 - (b) the types of program delivery models used;
 - (c) costs of the ESY program in LEAs;
 - (d) program effectiveness.
- (4) Developing guidelines for LEAs.

R277-751-5. Division of Responsibilities.

B. The duties of LEAs shall include:

- (1) Establishing LEA procedures which are in accordance with Board rules;
- (2) Providing professional development and on-site visits to assure that Board and LEA procedures are appropriately understood and implemented;
- (3) Establishing timelines to accomplish the purposes of this rule;
- (4) Analyzing LEA needs, reported by professionals, for ESY services for individual, eligible students;

- (5) Determining LEA ESY program parameters based upon data received from educators on individual, eligible students. The parameters shall include the personnel required to provide special education and related services, location of services, and budget specifications;
- (6) Ensuring parents and professionals have received information about dispute resolution procedures for the appeal of ESY eligibility decisions and ESY program parameters;
- (7) Implementing processes to collect program effectiveness data.

TECHNICAL ASSISTANCE: EXTENDED SCHOOL YEAR (ESY) SERVICES CONSIDERATIONS FOR IEP TEAMS

WHAT IS ESY?

Extended School Year (ESY) means special education and related services that are provided to a student with a disability beyond the typical school year/school day of the Local Education Agency (LEA), in accordance with the student's Individualized Education Program (IEP), for the purpose of providing a Free Appropriate Public Education (FAPE) to a student with disabilities.

ESY is an entitlement if the IEP team determines that the student could not receive a FAPE without it. FAPE is defined within the Utah State Board of Education Special Education Rules (2007) as special education and related services that are provided at public expense, under public supervision and direction, and without charge, meet the standards of the USOE and Part B of the IDEA, include preschool, elementary school, and secondary school education in Utah, and are provided in conformity with an IEP that meets the requirements of Part B of the IDEA and State Special Education Rules.

ESY services are different from regular school enrichment/tutoring programs and/or summer school and are not just an extension of time or duplication of the regular school year services. ESY services focus on specific goals selected by the IEP team from the student's current IEP.

ESY services may consist of special education or special education and related services in areas such as academic, social/behavior, motor, and/or communication instruction, based upon the individual needs of the student.

WHAT IS THE PURPOSE OF ESY SERVICES?

The purpose of ESY services is to maintain student skills on current IEP goals to ensure a FAPE. ESY needs and services are determined and documented by the student's IEP team, based on the student's individual needs.

It is recognized that during breaks in education, a reduction in skills can be measured in students with and without disabilities. ESY is used to ensure that skills do not regress so significantly that the level of achievement attained prior to an educational break cannot be re-attained in a reasonable period of time after traditional instruction resumes.

Purpose, continued

ESY is not required or meant to address the needs of students who did not meet IEP goals during periods of traditional instruction or to maximize educational benefit.

ESY services are not designed to develop new skills not currently identified in the student's IEP.

WHO MAY BE ELIGIBLE FOR ESY SERVICES?

Students (aged 3-21) eligible for ESY services are those whose IEP team has determined, **based upon a review of multiple data sources and factors**, on an individual basis that an ESY is required for that student to receive a FAPE.

IEP teams, including input from the parent(s), must consider the need for ESY for <u>each</u> (emphasis added) student with a disability at least annually and must document and provide Written Prior Notice of the decision regarding ESY eligibility to the parent(s).

LEAs may not refuse to provide IEP team-determined ESY services or limit ESY services to students who have a particular disability, or to students with a particular level of severity of disability.

IDEA eligibility does not automatically require the provision of ESY services.

Previous eligibility for ESY services does not trigger an ongoing need for ESY. The decision regarding the need for ESY must be made at least annually by the student's IEP team.

HOW DO IEP TEAMS DETERMINE A NEED FOR ESY SERVICES?

- The IEP team will consider several sources of educational data
- Use a multi-factor approach, not just a single factor
- Begin with a retrospective analysis of data
- If needed, continue with a predictive analysis

Retrospective data, such as:

- Regression and recoupment data
- Data that currently exist
- Past regression on targets

- Rate of recoupment of skills
- Other data that meets the standard of significant skill losses

 Depending on the student's unique needs, the number of data points needed to determine regression and recoupment may vary.

NOTE: Utah is part of a 10th Circuit Decision (Johnson v. Independent School District of Bixby, 921 F.2d 1022 (10th Circuit, 1990)) that states regression data alone are not a sufficient basis for an ESY decision, because all students, having disabilities or not, may regress to some extent during lengthy breaks from school. The decision should be based on a multifaceted inquiry such as the degree of the child's impairment, the ability of the child's parents to provide the educational structure at home, the child's rate of progress, his physical or behavioral problems, the availability of alternative resources, the ability of the child to interact with typical children, the areas of the child's curriculum that need continuous attention, the child's vocational needs and whether the requested service is extraordinary to the child's condition.

Predictive data, such as:

- The professional judgment of the IEP team on data, including those such as:
 - The degree and nature of the student's disability
 - The student's rate of progress on IEP goals
 - Any physical or behavioral concerns regarding the student
 - The areas of the student's curriculum that need continuous attention
 - Emerging skills
 - The student's vocational and transition needs

- Circumstantial considerations based on information about unique situations in the student's home, neighborhood, or community,
- Anecdotal reports from teachers, parents, caregivers, and related service providers
- Data from measures of daily performance

Eligibility Determination

The IEP team, after reviewing the collected data, determines if the student is eligible for ESY services.

- The student is not eligible for ESY if the data do not show a likelihood of substantial regression of learned skills/behavior and/or the amount of time to recoup skills was similar to that of students without disabilities or the impact of predictive factors does not indicate a need for ESY services.
- The student is eligible for ESY if the data show the likelihood of substantial regression and/or the amount of time to recoup skills/behavior would be longer than that of students without disabilities or the impact of predictive factors indicates a need for ESY services.

WHEN CAN ESY SERVICES BE DELIVERED?

Timelines for delivery of ESY services are determined by the IEP team based upon the individual needs of the eligible student. Options may include, but are not limited to:

- Summer vacations
- Before or after regular school hours
- School vacations

HOW CAN ESY SERVICES BE DELIVERED?

ESY services provided to address current goals may differ from the IEP special education and related services provided to the student during the typical school year; however, LEAs may not unilaterally limit the type, amount or duration of ESY services. ESY services may be modified to enhance generalization and maintenance of academic and behavior skills. Service model and delivery options may include, but are not limited to:

- School-based programs
- A cooperative program with another agency (e.g., LEA or State agency)
- Limited in-person student contact
- Week(s) of review prior to school starting
- Contracted services
- Community-based programs
- Services provided by parent(s) and supported by LEA personnel
- Services in conjunction with a summer school program of the LEA
- Direct instruction, consultation, and/or supervision
- Special education or special education and related services

WHAT AMOUNT OF ESY SERVICE IS NEEDED?

- The IEP team determines the need for ESY services, as well as the type, amount, location, and duration, based upon data specifying the amount and types of services needed to mitigate substantial skill reduction and the student's individual needs.
- LEAs may not unilaterally limit the type, amount or duration of ESY services.

WHO CAN DELIVER ESY SERVICE?

Personnel providing ESY services must satisfy the Highly Qualified (HQ) requirement set forth in the IDEA regulations (i.e., anyone who can deliver specialized instruction during regular school year), including:

- Appropriately and adequately trained and prepared special education teacher
- Appropriately and adequately trained and prepared related service provider
- Appropriately trained and supervised paraeducator
- Appropriately trained and supervised general educator

ESY DOCUMENTATION REQUIREMENTS

- The IEP team must document the consideration of ESY and data-based decision of whether ESY is needed on each IEP and provide Written Prior Notice to parent(s).
- If the ESY decision is postponed at the annual IEP meeting, the IEP team must revisit the issue and document the final ESY decision in the IEP and the LEA must provide Written Prior Notice to the parent(s) in sufficient time to permit access to Procedural Safeguards dispute resolution options.

NOTE: The USOE model IEP form allows IEP teams to determine eligibility for ESY services by the end of the school year.

Extended School Year (ESY) services are special education and related services that are provided to a student with a disability beyond the normal school year at no cost to the parent when the IEP team determines that without ESY services, the educational program would be of little or no benefit to the student due to the lack of services during breaks in the school year or between the end of one normal school year and the beginning of the next. If the IEP team determines your student is eligible for ESY services, a Written Prior Notice of ESY services will be completed and provided to you.

- Student requires ESY services (Attach description of goals and services, amount and frequency.)
- ☐ Student does not require ESY
- ESY decision to be documented by end of current school year

If this option is selected, the IEP team MUST meet to determine if the student is eligible or not eligible, document that determination, and provide Written Prior Notice of the decision to the parents. If the student is eligible for ESY services, the plan must be developed and documented in the IEP.

ESY DOCUMENTATION REQUIREMENTS

- If the IEP team determines the student needs ESY services in order to receive a FAPE, the IEP team shall determine the ESY program based on the student's needs, and then provide the parent(s) with Written Prior Notice of the IEP team decisions regarding:
 - Data used to make the decision
 - Which goals/skills will be reinforced (for maintenance)
 - Amount, type, and location of special education or special education and related services
 - The personnel responsible for providing the ESY service(s)

Extended School Year Services—IEP Attachment Student Name:	
The IEP team for the above-named student has determined that he/she is eligible for extended school year services because the student would not receive a free appropriate public education without these services.	
This decision is based on the following data:	
GOALS/SKILLS from current IEP that will be reinforced/maintained during extended school year period.	
1.	
2.	
3.	
J	
SERVICES	
Type Location Hours, days, Who will provide ser weeks	vices
Written Prior Notice for Free Appropriate Public Education The IEP team proposes to implement this extended school year program, based on the student's needs. You have received and have protection under the Procedural Safeguards, a copy of which was sent to you upon the student's referral for evaluation. You may request another copy of the Procedural Safeguards from the special education teacher at any time. If you have any questions	

regarding this notice or the Procedural Safeguards, contact the principal or the special education teacher at the student's school.

Parent/Adult Student provided with copy of this IEP attachment.

WHERE CAN ESY SERVICES BE DELIVERED?

- A student's ESY placement may differ from the regular school year placement but must be provided in the least restrictive environment (LRE) appropriate to meet the student's needs.
- LEAs must maintain or utilize the necessary placement options to implement the student's IEP and meet the requirements of the LRE for ESY services. (Continuum of placement options)

WHERE CAN ESY SERVICES BE DELIVERED?

- An LEA is not required to create new programs as a means of providing ESY services to students with disabilities in integrated settings if the school does not provide services for its nondisabled students at that time.
- An LEA is not prohibited from providing ESY services in a noneducational setting, if the student's IEP team determines that the student could receive appropriate services in that setting.

SUGGESTED PRACTICES

- Identify goals to be targeted
 - Students may recoup skills in one area faster than another area
- Provide assistive technology, materials
 - If a student has been using AT, e.g., PECS, provide the materials so he can have access to the same system during the extended year
 - May need to provide computer software, specialized chairs, therapy galls, writing tools, etc.
 - If the student uses an AT or medical device, let the ESY provider know whom to contact if the device breaks or batteries need to be charged, etc.

- Compile a cover sheet
 - Detail goals to target during ESY and other information, including medical issues and parents' preferred method of communication
 - Use to document student's pre-and post-levels of mastery for each goal
 - Option: create an ESY binder for each student; include goals to be targeted, medical information, preferred data collection methods, and accommodations

- Set aside time for team members to meet with ESY providers
 - Have the provider attend an IEP meeting at the end of the school year
 - Have the provider visit the student's classroom
 - Have the student's teacher participate in the first week or so of ESY to model behavior reinforcement techniques, assist the student in academic or social activities, help implement required calming or coping mechanisms, etc.

- Explain what data to collect
 - Provider should collect and record data on the student's progress on each goal targeted
 - Instruct the provider to record anecdotal information, document any new issues that may have surfaced during ESY, e.g., difficulty with social interactions, new behavior problems, different motivators, etc.

Responding to Parent's Request for ESY

- Collect data before and after school breaks
 - Collect data a day or two before breaks and a day or two after breaks
 - Pay particular attention to breaks lasting more than 4-5 days
 - Document data collection
 - On Dec. 21, before the two-week holiday break, Sara was reading 90 words per minute. On Jan. 7, when Sara returned from holiday break, she was reading 85 words per minute. On Jan. 14, Sara was reading 90 words per minute.
- Be sensitive to parents' requests
 - IEP teams should meet to discuss the request, even if school team members feel the student is not eligible
- Discuss other available options with families
 - Summer programs provided by the LEA, e.g., summer school, enrichment activities
 - Explore free- or low-cost community options, e.g., library story hour, summer camps, city park or community provided activities

Considering Recommendations from Private ESY Providers

Students may have been receiving tutoring or therapy services from a private provider who recommends ESY services to the parent.

- Review the data from the service provider
- Invite the ESY provider to a meeting to discuss the recommendations
- Stick to the agenda: discuss goals, services, instruction
- Focus on provision of a FAPE based on student's current progress
- Offer to reconvene the meeting if more data need to be collected and reported
- Provide written prior notice that the services will or will not be implemented

Adapted from Special Ed Connections, July 20, 2010

- Discuss ESY eligibility at every IEP team meeting
 - Very few students will be eligible, but making ESY services
 discussions part of the IEP agenda will ensure the team is following
 the requirements of IDEA regarding ESY services

- Understand the USOE Guidelines for ESY services
 - Know that "recoupment and retention" are not the sole criteria for ESY services eligibility
 - Develop strategies for collecting and recording data before and after school breaks
 - Consider data collection before and after extended student absences, including family vacations, illness, etc. (use for retrospective data review) NOTE: Losses due to truancy may be considered as retrospective data, but should not be considered a basis for ESY eligibility

- Follow IDEA guidelines
 - Do not limit ESY services to students in a particular disability category
 - Ensure that ESY services are provided to meet individual student's needs and are not "one size fits all", e.g., 4 weeks during August

- Make sure all team members understand ESY services
 - This includes parents and adult students
 - ESY is not summer school, an enrichment program, or credit recovery
 - ESY services are provided only if the IEP team determines, on an individual basis, that the services are necessary for the provision of a FAPE to the student.

Adapted from Special Ed Connections, January 3, 2007

Quiz

uniformly offers all students with disabilities the same number school days per year.
True False
B. The school district is not responsible for covering the cost of ESY if it has provided the disabled student with the round-the-clock services of a residential placement.
True False
C. The sole standard for determining ESY eligibility is regression/recoupment.
True False
D. Regression/recoupment must be proven by actual data: prospective opinions of expert witnesses are not sufficient.
True False
E. ESY is only available to students with severe mental, not emotional, impairments.
True False

Quiz

not the emotional, physical or communication area.	area,
True False	
G. As a remedy for a school district's failure to provide ESY was warranted for the child, a court or hearing officer may or reimbursement of tuition and expenses incurred by parents i provided such a program.	rder
True False	
H. As a remedy, a court or hearing officer may order compeneducation services where neither the school district nor the provided an ESY program as needed by the child.	
True False	
I. ESY does not apply to students in school district preschool education programs.	l special
True False	
J. The length and scope of ESY programs are within the disc the school district.	retion of
True False	

Questions?

Comments?

Concerns?